

244

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

CASE NO: 6588/2015

In the application for admission as *amicus curiae* of:

**COUNCIL FOR ADVANCEMENT OF THE SOUTH  
AFRICAN CONSTITUTION**

*Applicant for admission  
(as amicus curiae)*

**In the matter between:**

**ROBERT McBRIDE**

Applicant

and

**MINISTER OF POLICE**

First Respondent

**MINISTER FOR PUBLIC SERVICE AND  
ADMINISTRATION**

Second Respondent

---

**FILING SHEET: FIRST RESPONDENT'S ANSWERING AFFIDAVIT**

---

Document:

**FIRST RESPONDENT'S ANSWERING  
AFFIDAVIT**

Presented for filing by:

**Hogan Lovells (South Africa)  
incorporated as Routledge Modise Inc.**

SIGNED at JOHANNESBURG on this the 13<sup>th</sup> day of AUGUST 2015.

24<sup>2</sup>5

---

**Hogan Lovells (South Africa)**  
**Incorporated as Routledge Modise Inc**  
Applicant's Attorneys  
22 Fredman Drive  
Sandton  
Tel: 011 775 6386  
Fax: 086 688 1489  
**Ref: I35771/SJ Thema/L Mayila/dn**  
**Matabane Inc**  
5<sup>th</sup> Floor, Presidia Building  
Office 501  
Cnr Paul Kruger & Pretorius Street  
Pretoria Central  
Box 12168, The Tramshed, 0126  
Tel: 012 326 7076  
Fax: 012 321 1491  
Ref: Mr R Mudau

TO:  
**THE REGISTRAR OF THE ABOVE**  
**HONOURABLE COURT**  
PRETORIA

AND TO:  
**LEGAL RESOURCES CENTRE**  
Attorneys for the Council for the Advancement of  
the South African Constitution  
**c/o Gilfillan du Plessis Inc**  
First Floor, LHR Building  
357 Visagie Street  
Pretoria  
Tel: 011 836 9831  
Email: [avani@lrc.org.za](mailto:avani@lrc.org.za) / [Michael@lrc.org.za](mailto:Michael@lrc.org.za)  
Ref: A Singh / M Power / 701481OJ / J60

Received a copy hereof on  
this the \_\_\_\_\_ day of August 2015.

---

For: Attorneys for the Council for the  
Advancement of the South African  
Constitution

3  
246

AND TO:

**ADAMS & ADAMS ATTORNEYS**

Attorneys for the Applicant (Robert McBride)

4 Daventry Street

Pretoria

Email: [jacmarais@adamsadams.com](mailto:jacmarais@adamsadams.com)

Service by Email

Ref: JSM/MG/LT2141

Received a copy hereof on  
this the \_\_\_\_\_ day of August 2015.

---

For: Applicant's Attorneys

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

Case No 6588/2015

In the application of:

**COUNCIL FOR THE ADVANCEMENT OF  
THE SOUTH AFRICAN CONSTITUTION**

Applicant for admission  
as *amicus curiae*

and

**MINISTER OF POLICE**

First Respondent

**MINISTER FOR PUBLIC SERVICE  
& ADMINISTRATION**

Second Respondent

*In re:*

**ROBERT McBRIDE**

Applicant

and

**MINISTER OF POLICE**

First Respondent

**MINISTER FOR PUBLIC SERVICE  
& ADMINISTRATION**

Second Respondent

---

**ANSWERING AFFIDAVIT**

---

I, the undersigned,

**SETšHEPHI JEHIEL THEMA**

state under oath as follows:

1. I am an adult male and am the attorney for the Minister of Police, the



first respondent in the application for admission by the Council for the Advancement of the South African Constitution ("**CASAC**") as *amicus curiae*. I am also a director at Hogan Lovells (SA) incorporated as Routledge Modise Incorporated, the attorneys of record for the Minister of Police.

2. The facts contained in this affidavit are true and correct, except where the context indicates otherwise.
3. I have read the affidavit filed on behalf of CASAC.
4. The first respondent consented to the admission of CASAC as *amicus* on limited grounds on 26 May 2015 (see the letter attached as "**CA7**" to the founding affidavit).
5. This affidavit is therefore filed in opposition to the conditions on which CASAC seeks to be admitted as *amicus* in this matter.
6. To be admitted as an *amicus curiae* a party must demonstrate *inter alia* that the submissions it intends to make—
  - 6.1. will be helpful to the court in arriving at a particular conclusion; and
  - 6.2. will be new and not ones raised by the parties to the dispute.
7. The first respondent persists in the view that CASAC's intended submissions on "*the meaning of adequate independence of oversight bodies in the realm of policing*"<sup>1</sup> will be neither helpful nor new.

---

<sup>1</sup> Paragraph 6.2 of annexure "**CA5**" to the founding affidavit (CASAC's initial request for consent to be admitted as *amicus*); repeated in paragraph 21.2 of the founding affidavit



8. It is clear that the submissions of CASAC on this issue will not further inform the proper debate and resolution of the question of the "independence" of the Independent Police Investigative Directorate ("IPID") in the context of the constitutional issue in this matter.
9. In numerous paragraphs of the multiple affidavits of the applicant, it is clear that the key constitutional attack on the legislation establishing IPID is that it does not provide for the adequate structural and operational independence of IPID.
10. It is also repeatedly stated in the affidavits filed by Mr McBride that—
  - 10.1. the current legislative design and the exercise of powers by the first respondent creates a loss of confidence in the public in relation to the independence of IPID; and
  - 10.2. that the legislative framework undermines the ability of IPID effectively to fight corruption in the ranks of the police.
11. The submissions of CASAC mirror precisely the nature of those to be made on behalf of Mr McBride. They are accordingly not new. They are a repetition of the submissions of the applicant.
12. This is so on CASAC's own version, for, as it alleges in paragraph 29 of the founding affidavit, *"CASAC is of course well aware that the question of the independence of IPID is a key issue that will be covered by the other parties in this matter."*
13. Despite the above, CASAC alleges that it *"has no intention of repeating"* the submissions of the parties on this issue. Rather, it will *"focus ... on the meaning and requirements for independence of oversight bodies as contained in foreign law in comparative*

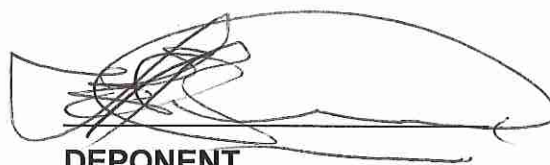


*jurisdictions."*

14. CASAC intends to submit that, in law, the "*context within which policing takes place*"; "*the factual circumstances that underpin the role and duty of IPID and its Executive Director*"; and the "*foreign law position in comparative jurisdictions*" on the independence of analogous police oversight bodies, supports a particular interpretation of the powers afforded the first respondent under the impugned provisions in the main application.
15. The problem with these submissions is further that they *are all similar* to the submissions that will be made on behalf of the applicant. This much is clear from submissions made by the applicant. CASAC, it would appear, simply wishes to bolster a partisan interest, to support the applicant, rather than becoming a genuine *amicus curiae*. This is not a proper role of an *amicus*.
16. In fact, Mr McBride, in his replying affidavit filed on or about 19 June 2015, intends to contend in written and oral argument that "*the importance of the operational and institutional independence of police complaints directorates from the executive authority responsible for the police is widely recognised ... in foreign jurisdictions.*"
17. The repetition of the submissions of another party by an *amicus* is impermissible, and, in the circumstances, and on this score, CASAC's application to be admitted as *amicus curiae* must be dismissed. The Minister also opposes the introduction of the affidavit by Mr Bruce.
18. Alternatively, any order admitting CASAC as *amicus* should be limited to the issues on which *all* parties have consented. To the extent that the affidavit of Mr Bruce is taken into account, we have filed a response thereto, in the form of the annexed affidavit of **DR SETLHOMAMARU ISAAC DINTWE**.



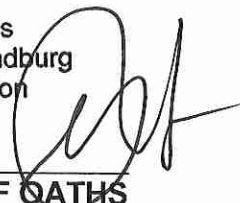




DEPONENT

I hereby certify that this affidavit was signed and sworn to before me at SANDTON on this the 13<sup>th</sup> day of AUGUST 2015, by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and who uttered the following words: "I swear that the contents of this affidavit are true so help me God".

**Andries Maree**  
Commissioner of Oaths  
Reference: 22/11/2012 Randburg  
165 West Street, Sandton



COMMISSIONER OF OATHS

FULL NAMES: *Andries S. Maree*  
BUSINESS ADDRESS:  
DESIGNATION:  
AREA/OFFICE:

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

CASE NO.: 6588/2015

In the matter between:

**ROBERT MCBRIDE**

Applicant

and

**MINISTER OF POLICE**

First Respondent

and

**COUNCIL FOR ADVANCEMENT OF THE SOUTH  
AFRICAN CONSTITUTION**

Applicant for admission  
*as amicus curiae*

---

**AFFIDAVIT**

---

I, the undersigned

**SETLHOMAMARU ISAAC DINTWE**

Do hereby make oath and state that:

1. I am an adult male academic and researcher.
2. The facts stated herein are, save where the contrary is indicated by the context, within my own personal knowledge and to the best of my belief both true and correct.

3. I am writing and making submissions in my capacity as an expert on police matters and civilian oversight issues in South Africa. My qualifications and experience in this regard are set out below:
4. I hold the following qualifications:
  - 4.1 Bachelor of Criminal Justice (University of Bophuthatswana);
  - 4.2 Bachelor of Technology in Policing (Technikon Southern Africa);
  - 4.3 Master of Technology in Forensic Investigations (University of South Africa);
  - 4.4 Doctor of Literature and Philosophy (University of South Africa);
  - 4.5 Extra-Curricular Diploma in Organised Crime (EU, Ohrid, Republic of Macedonia).
5. I have 16 years of experience in the criminal justice system in South Africa.
6. In October 1999, I joined the South African Police Services (SAPS) as student constable. I was later deployed at Boitekong Police Station in Rustenburg. I worked first in the Client Service Centre and later as a detective.
7. In January 2006, I was promoted and transferred to the Independent Complaints Directorate (ICD) as a Principal Investigator at the Anti-Corruption Command based in Pretoria.



8. In August 2006, I was promoted to the position of Head of Investigation Programme at the Mpumalanga Provincial Office of the ICD. I was responsible for, inter alia:

8.1 Managing the capital, physical and human resources of the investigation component in Mpumalanga Provincial office;

8.2 Supervising the investigation component staff;

8.3 Acting as provincial Head when required;

8.4 Investigating high profile cases in the province;

8.5 Compiling periodical reports;

8.6 Overt and covert intelligence gathering; and

8.7 Coordinating Section 205 and 252A subpoenas.

9. In January 2007 I joined the University of South Africa as a Lecturer in the College of Law, School of Criminal Justice, in the Department Police Practice.

10. In 2011 I was promoted to the position of Senior Lecturer. My key performance areas are:

10.1 Research: 60%

10.2 Tuition: 25%

10.3 Community engagement: 10%

10.4 Academic citizenship: 5%

11. I am responsible for the supervision of postgraduate students conducting research on police science, forensic investigation and police management. This year I have 14 Masters students and one Doctoral candidate.
12. In 2010, Professor Moses Montesh and I prepared written submissions on the proposed Independent Police Investigative Directorate Bill for the public hearings held by the Portfolio Committee on Policing. We also made oral submissions in parliament.
13. I have published numerous articles in accredited journals. My research has focussed on the independence and effectiveness of the ICD as well as civilian oversight in the criminal justice system.
14. I have contributed chapters in two books published by the CRC Press in the United States of America. My Curriculum Vitae is attached as per annexure "**SD1**".
15. I have edited a book (together with Professor Rudolph Zinn) titled '*Forensic Investigation: Investigative practice and legislative principles*' 2015, Juta Law Publishers. The other publications are attached as annexure "**SD2**".

16. In 2014, I was seconded as a research supervisor to Gauteng Department of Community Safety in the Research and Policy Unit. My responsibilities were:

- 16.1 Developing a research and knowledge management strategy;
- 16.2 Managing research staff and resources;
- 16.3 Compiling periodical reports;
- 16.4 Conducting and supervising research on safety and security issues;
- 16.5 Advising on policy development and implementation; and
- 16.6 Creating partnerships with other research institutions.

17. I am a member of the following professional bodies or associations:

- 17.1 Criminological and Victimological Society of Southern Africa (CRIMSA);
- 17.2 Policing Association of Southern Africa (POLSA);
- 17.3 South African Association of Public Administration and Management (SAAPAM);
- 17.4 The Association of Certified Fraud Examiners (ACFE); and
- 17.5 The International Police Executive Symposium (IPES).

18. I have presented research papers in conferences in South Africa and internationally.

## INTRODUCTION

19. It is of course a notorious fact that police brutality has its origins in the enforcement of colonial and apartheid laws. The early years of South Africa's transition to democracy saw a myriad of changes to legislation and the institutional make-up of the state aimed at addressing the problem of police brutality.
20. In fact the issue of police brutality and misconduct in general has always been a priority for the South African government hence there was a constitutional framework for an establishment of the civilian oversight body in 1993 already. Section 222 of the Interim Constitution (Act 200 of 1993), provided that *'there shall be established and regulated by an Act of Parliament an independent mechanism under civilian control, with the object of ensuring that complaints in respect of offences and misconduct allegedly committed by members of the service are investigated in an effective and efficient manner'*.
21. At this point, the spirit of the Interim Constitution can be understood to emphasise the independence of the oversight mechanism from the police. Such body was supposed to be under civilian control and not the police itself or be headed by a police official.
22. The African National Congress (ANC) sought to normalise relations between police and communities. For instance, the National Peace Accord was signed on 14 September 1994 during the negotiations for the government of national unity. This was followed by the signing of the 'Ready to Govern' document which also



sought to address the peaceful co-existence between police and communities.

23. Since 1993, the complaints handling process for police misconduct developed from a fairly marginal area of police investigation, to a prioritised and well-resourced specialism. During this time of transition:

23.1 Community Policing Forums were established to play an oversight role at local level.

23.2 The Secretariat of the Police was also established at the Provincial and National level in order to strengthen political oversight over the police.

24. This political oversight sought to ensure that police conduct conformed to the values and ethos of the new constitutional dispensation. This was in direct contrast to the situation under apartheid where the police operated in a para-military fashion, with limited civilian political oversight.

25. Most significantly and in addition to these interventions, Section 50 (1) (a) of the South African Police Services Act (Act 68 of 1995) established the Independent Complaints Directorate (ICD). Further developments led to the establishment of the current civilian oversight body, the Independent Police Investigative Directorate (IPID).

26. The independence of civilian oversight bodies has been a primary concern and a decisive factor in the development of the civilian oversight model over the last

twenty years.

27. In this affidavit I deal with the issues listed below:

27.1 I look first at the reasons that led to the establishment of a civilian oversight body for the police. While there are a number of mechanisms for this purpose, I focus on the establishment of the ICD.

27.2 I then discuss the challenges faced by the ICD during its existence. These challenges are:

27.2.1 Duplication of functions with the other law enforcement agencies;

27.2.2 Lack of independence;

27.2.3 Limited policing powers;

27.2.4 Limited mandate or jurisdiction;

27.2.5 Lack of powers to force institutions to comply and implement findings; and

27.2.6 Accessibility to the public.

27.3 I then explain the establishment of the IPID.

27.4 I analyse and contextualise the concept of 'independence' in relation to the IPID. In particular, I consider the degrees of independence that exist in different contexts.



27.5 I will also discuss the position of the IPID in the scheme of the Anti-Corruption Agencies (ACA). The main question under this section is whether the IPID can be seen or regarded as an ACA. I analyse the number of corruption cases investigated by the IPID in order to discuss the substantive functions of IPID.

27.6 In the next part of the affidavit I discuss the relationship between the executive and IPID.

27.7 Finally, I analyse the independence of the IPID with special reference to minister's power to remove the head of the IPID in terms of Section 6(6) of the Independent Police Investigative Directorate Act, Act 1 of 2011 (IPID Act).

#### **THE FACTORS THAT LED TO THE ESTABLISHMENT OF CIVILIAN OVERSIGHT FOR POLICE**

28. In South Africa before 1993, the police institution was heavily influenced by the political climate. The police institution was seen as a force. This should be contrasted to the current South African Police Services (SAPS). It did not recognize the community based model of policing (Kleyn; Rothmann & Jackson 2004:37).

29. Peaceful political action and challenging the apartheid state was repressed throughout the development of police. The 1960 Sharpeville massacre is an example. On 21 March 1960, the police opened fire at an anti-government

demonstration at Sharpeville in the Southern Transvaal (Spence 2007:1). A total of 67 black demonstrators were killed, including women and children and over 180 were injured (Spence 2007:1). Although the Sharpeville massacre is not the sole example of police brutality; it proves sufficient in depicting the manner in which the human rights were infringed upon by the police. Apart from the victimisation associated with police brutality; it goes without saying that the relationship between the police and the community reached a gal bitter state.

30. Research has shown that the brutal nature of the police was not isolated to South Africa. Policing across the world has been characterised by brutality and a scant regard to the basic human right of the fair trial. According to Palmiotto (2004:2) in Rome, through the middle age; a concept of 'trial by ordeal' was used to solicit confessions from the suspects. They were exposed to methods such as putting their hands in boiling water. The other method was called 'star chamber', which derived its authority from the King and used torture to compel confessions from the suspects.
31. During the initial years of the South African transition to democracy; police accountability formed the core of a policing transformation. This was understandable, as argued by Tait (2007:5) because the police had been used to enforce the apartheid policies, and now bringing them under democratic control was essential. The ANC led by its then president, Nelson Mandela, became involved in the police policy development during the negotiations for the Government of National Unity, resulting in the signing of the National Peace Accord

on 14 September 1991 (Burger 2007:70).

32. The National Peace Accord emphasised the need to repair the relationship between the police and communities. The co-operation between the police and the community is multi-fold. Firstly; the community can resolve to assist the police in fighting against the crime. Secondly; the community policing forum is in a better position to act as an oversight body therefore ratifying the actions of the police.
33. In addition to enforcing the relationship between the police and the community; the National Peace Accord also called for police accountability. Chapter 3.1.1 of the National Peace Accord advocated that:

***"The police shall endeavour to protect the people of South Africa from all criminal acts and shall do so in a rigorously, non-partisan fashion, regardless of the political belief and affiliation, race, religion, agenda or ethnic origin of the perpetrators or victims of such acts."***

Furthermore, Chapter 3.1.5 provided that the police shall exercise restraint in the pursuance of their duties and shall use the minimum force that is appropriate in the circumstances.

34. The most important elements from the provisions of the National Peace Accord are impartiality and the use of appropriate methods in dealing with crime. There was another document which dealt with issues of police relations and it entitled 'Ready to Govern' which was signed on 31 May 1992. According to Hough and Du Plessis (2000:19), the police were now expected to guarantee the personal security of



citizens and the free and peaceful exercise of their constitutional rights. The 'ready to govern' document also emphasised the acceptable conduct of the police. This document also referred to the constitutional rights of the citizens.

35. It was widely accepted that the SAPS required a very strong oversight mechanism. This was in part, due to the history of this country as I have explained above. In addition, the tensions between police and society were exacerbated by the violence experienced by all sections of society.
36. During this period community policing forums began to play an oversight role at the local level. The Secretariat for Safety and Security was also established at provincial and national levels to strengthen ministerial oversight over the police and monitor service delivery and compliance to policy (Tait 2007: 6).

#### **THE LEGAL FRAMEWORK IN ESTABLISHMENT OF THE INDEPENDENT COMPLAINTS DIRECTORATE**

37. The ICD was established by section 50(1) (a) of the South African Police Service (SAPS) Act 68 of 1995. This section provided for the establishment of the ICD, which would be structured at both national and provincial levels. Chapter 10 of the South African Police Services Act covered crucial aspects of the ICD such as the appointment of the Executive Director; police personnel and expenditure; the functions and many more. According to the Act, the Executive Director of the ICD was appointed by and reported to the Minister of Safety and Security.

38. In addition to the Police Act, there were provisions already in the Constitution which dealt with the establishment of the ICD. Section 206 (1) and (2) placed a political responsibility on a member of cabinet to determine national police policy and make provisions for different policies in respect of different provinces. Section 206 (3) (a) provided that each province is entitled to, inter alia, monitor police conduct. On the other hand, Section 206 (6) made reference to an independent police complaints body established by national legislation. The fact that a politician was in charge of policing was an important step in the evolution of policing since the apartheid era. Police could no longer operate outside the structures of political accountability. This was a necessary adjustment in the subtle but important move from "force" to "service". Equally it was recognised that a police oversight body was necessary. The oversight body must be independent, although placed under the political responsibility of the minister.

#### **THE CHALLENGES PERTAINING TO THE INDEPENDENT COMPLAINTS DIRECTORATE**

39. The establishment and existence of the ICD was not without its problems. The challenges revealed by research were primarily structural while others were legal in nature. In the research that I conducted with Professor Montesh, there were challenges that were identified and these are discussed below (Dintwe&Montesh 2008:172-173):

##### ***Duplication of functions with other law enforcement agencies***

40. In terms of the ICD mandate, Class III complaints included corruption, fraud,

forgery and theft among others. These complaints or offences also fell under the jurisdiction of the Special Investigating Unit (SIU), the then Directorate of Special Operations (DSO) as well as the SAPS National Inspectorate. Such duplication of functions was a waste of limited resources. Any specialised institution could investigate police conduct on any matter. Yet, this was the exact function of ICD. There was no restriction on the other institutions to prevent the investigation of these cases involving police officials. An example of this was the case of Selebi which the late former Commissioner Jackie was investigated by ICD, DSO and SIU.

### ***Independence***

41. It is accepted that an adequate degree of independence is necessary for the effectiveness of a body such as ICD. At the same time, such bodies require the support of the government to carry out their functions effectively. Whatever the appropriate level of independence from government, it is clear that a body like ICD must be ultimately and institutionally independent from the police. The arrangement where the ICD was established by the Police Act and had to share the resources with the police was not conducive to independence. ICD was like a unit in the police and this did not auger well with the description of a civilian oversight body.

### ***Limited policing powers***

42. Applications to secure policing powers for investigators of the ICD were taking



between nine to eighteen months. These powers could only be conferred to the investigators by the Minister of Safety and Security. This had serious adverse consequences. Some of the investigators in the ICD could not properly fulfil their functions.

***Limited mandate or jurisdiction***

43. In terms of section 53 of the South African Police Service Act 68 of 1995 as amended by Act 83 of 1998, the ICD had jurisdiction over the SAPS and Municipal Police Services. However there were other law enforcement agencies which carried firearms and performed policing duties. These agencies included the Provincial Traffic Police Services, the Local Traffic Police Agencies, the then Directorate of Special Operations (DSO), the Public Safety Units of some of the municipalities such as Mogale City, Nelson Mandela Bay Municipality as well as members of the Department of Correctional Services. Yet as the law stood, they were outside the jurisdiction of ICD.

***Lack of powers to force institutions to comply and implement findings***

44. The Police Act did not make provision for the ICD to ensure compliance with its findings and recommendations. The ICD appeared to be a "toothless dog". This frustration was clearly articulated by the then General Manager of Investigations at ICD, Mr Tommy Tshabalala. According to him, *"this is a serious inhibiting factor in the ICD's attempt to root out poor service delivery within our law enforcement agencies"* (Tshabalala, 2008).

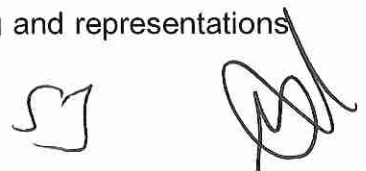
***Accessibility to the public***

45. The ICD had nine offices throughout the country and was in a process to add satellite offices (Tshabalala 2008). This was not sufficient. The SAPS alone had approximately 1300 police stations and a number of satellite stations. Nine offices were not enough to oversee such big organisation plus the Municipal/Metro Police Services. The geographical location of the ICD offices made it difficult for ordinary citizens to access their services. In addition, this geographical location necessitated unnecessary traveling for ICD investigators, thereby exhausting the budget.

**THE ESTABLISHMENT OF THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE**

46. It is my considered opinion that the establishment of the Independent Police Investigative Directorate (IPID) was an effort to address the challenges discussed earlier in the context of the ICD. I attended and made submission to the Portfolio Committee when the IPID Bill came up for deliberations. It was made clear during the deliberations before Parliament that the loopholes in the establishment of the ICD were to be addressed by the new IPID Act. In the main, my oral submissions in parliament were based on the challenges that Prof Montesh and I had published in the Acta Criminological Journal (Volume 21.2, 2008) as well as in the Journal of Public Administration (Volume 43, 2008). These are the challenges that were discussed earlier in this affidavit.

47. The IPID Act, Act 1 of 2011 is a product of the public hearing and representations

Handwritten signature and initials in the bottom right corner of the page.

made to parliament by the civil society, Nongovernmental Organisations, Faith-Based Organisations and other formations. The process of public hearings and consultations was open and transparent and everyone had an opportunity to share their views on how the legislation was to be enacted. Every citizen of South Africa yearns for a civilian oversight body which will hold the police accountable and ensure that the issues of police brutality are dealt with accordingly. The following are the important changes brought about by the IPID Act:

- 47.1 It gave the civilian oversight body the 'teeth' it needed to tackle any criminality in the police;
- 47.2 The legislation expanded the body's mandate to conduct independent and impartial investigations;
- 47.3 The IPID Act obliged the police management to notify the IPID about the matters that require investigation immediately they become aware of such on the aim of criminal sanction;
- 47.4 The IPID Act obliged the police management to act and respond to IPID's recommendations;
- 47.5 It mandated the IPID to investigate death in police custody or as a result of police action, any complaint regarding the discharge of official firearm by a police officer, rape by a police officer or while in police custody and complaints of torture or assault against police officers carrying out their duties; and



47.6 The IPID was also mandated to investigate corruption matters and any other matter referred to it.

48. The IPID is not a purely investigative body. It enforces its own findings through referrals for prosecution. This is in line with the guidelines provided in the Handbook on Police Accountability, Oversight and Integrity of 2011. Independence is best maintained if the independent body has statutory underpinnings (UNODC 2011:49). It is my conclusion that the IPID as it stands today has a very strong legislative underpinning.

#### **THE CONTEXTUALISATION OF INDEPENDENCE OF THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE**

49. Independence is clearly important for IPID. However, independence will differ in degree depending on the context within which it is being applied. The degrees of independence are captured by Rabkin (2015) who argues that in the South African constitutional scheme, institutional independence is not as simple as it sounds. According to this author, the highest protection of independence is given to the judiciary as the Constitution provides that the courts are independent and subject only to the Constitution and the law.

#### **DETERMINING THE POSITION OF INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE IN THE ARCHITECTURE OF ANTI-CORRUPTION AGENCIES**

50. My approach is that although the independence of IPID is important and not disputed as a requirement for the police effectiveness and police legitimacy there


is a need to establish whether IPID really is an Anti-Corruption Agency (ACA). This determination will further assist later in determining whether the Glenister judgement (Glenister v President of the Republic of South Africa 2011 (3) SA 347 (CC)) can be applied to the IPID. Research has shown that an ACA is based on a universal model and prescribed to the member states by the United Nations. The World Bank (1999) defines an ACA as a body that reviews and verifies official asset declarations; carries out investigations of possible corruption; pursues civil, administrative and criminal sanctions in the appropriate forums. In addition to that, Meagher (2002:3) who warns that the definition of an ACA should not be too broad defines an ACA as a permanent agency whose primary function is to provide centralised leadership in one or more of the core areas of anti-corruption activities. The activities include policy, analysis and technical assistance in prevention, public outreach and information, monitoring, investigation and prosecution. The meaning of an ACA as explained by De Sousa (2002) is that it is a body which uses a cocktail of measures of a diverse nature including being preventive, repressive and educational as well as being legislative, institutional and procedural in nature. This approach of an ACA is normally holistic and incremental in nature with multi-faceted impact.

51. The common thread between the triangulated definition of an ACA is that an ACA is specialised and its focus is clear and unambiguous. Its sole or primary mandate is to combat corruption. It is noteworthy that corruption is a complex concept which may include variety of crimes which are economic in nature. My deduction from the literature is that an ACA's scope covers all citizens of a specific country including

the executive, legislature and the judiciary. This how the South Africa's Directorate of Priority Crimes Investigations (DPCI) is structured and mandated. Another example of such in our neighbouring Botswana is the Directorate of Corruption and Economic Crimes (DCEC). Unlike the IPID which can only investigate and deal with complaints against the members of the police, the DPCI can investigate everyone including the president, the ministers, the parliamentarians, judges and the magistrates. I therefore conclude that the DPCI falls neatly into the definition of an ACA whereas the IPID does not.

52. I conclude and submit that the tendency by some researchers and authors to describe IPID as an ACA is wrong. It is my expert view that IPID is a civilian oversight body and not an ACA. This submission is made in full cognisance of the fact that the IPID has an investigate mandate over corruption cases. But this is not its primary mandate and it is limited to corruption within the police. In fact, the investigation of corruption is only a part of the IPID's bigger scheme of work. For instance, during the 2009/2010 financial year, the SAPS charged a mere 362 members with corruption, representing a mere 0.002% of the organisation's workforce (Faull 2010). This, combined with the entire mandate of the IPID as it stands goes a long way in showing that viewing or describing the IPID as an ACA is a misnomer. It is my considered view that the Glenister and HSF cases are of limited application to the police oversight body like IPID. I am not aware of a court case which has examined issues of independence relative to a body like IPID.

53. The table below further shows that the investigation of corruption by the IPID is

SJ 



just a fraction of the total work that the IPID is doing.

Table 1(a): Intake for the period under review	Incident(s)
Section 28(1)(a)-deaths in police custody	234
Section 28(1)(b)-deaths as a result of police action	390
Section 28(1)(c)-complaint of the discharge of official firearm(s)	429
Section 28(1)(d)-rape by police officer	121
Section 28(1)(e)-rape in police custody	19
Section 28(1)(f)-torture	78
Section 28(1)(f)-assault	3916
Section 28(1)(g)-corruption	84
Section 28(1)(h)-other criminal matter(s)	374
Section 28(1)(h)-misconduct	23
Section 28(2)-systemic corruption	12
Non-compliance with Section 29 of IPID Act	65
<b>Total</b>	<b>5745*</b>

Table 1.1 The numbers of incidents reported to the IPID during the 2013/2014 financial year (IPID 2013/2014 Annual Report)

54. The table below shows the comparison between the corruption cases that were handled by the IPID versus the other cases:

INVESTIGATION AND INFORMATION MANAGEMENT					
Performance Indicator	Actual Achievement 2012/2013	Planned Target 2013/2014	Actual Achievement 2013/2014	Deviation from planned target to Actual Achievement for 2013/2014	Comment on deviations
Percentage of investigations of torture completed within 90 days	New target	50% of all registered cases	8% A total of 8 cases were completed within 90 days. A total workload was 106 cases	42%	Target not met. An overall total of 30 (28%) cases out of 106 cases were completed of which 22 were completed after 90 days, this was due to unavailability or tracing of witnesses and delays of technical reports which were outside the control of IPID. The Directorate also had capacity constraints
Percentage of investigations of assault completed within 90 days	New target	50% of all registered cases	26% A total of 1 551 cases were completed within 90 days. A total workload was 5 959 cases	24%	Target not met. An overall total of 3 322 (56%) cases were completed of which 1 771 were completed after 90 days; this was due to unavailability or tracing of witnesses. The Directorate also had capacity constraints
Percentage of investigations of corruption completed within 90 days	New target	55% of all registered cases	19% 30 cases were completed within 90 days. A total workload was 161 cases	36%	Target not met. An overall total of 84 (52%) cases out of 161 cases were completed, of which 54 were completed after 90 days, this was due to unavailability or tracing of witnesses. The Directorate also had capacity constraints
Number of cases of systemic corruption identified for possible investigation approval, within a financial year	New target	18	12	6	Target not met. In some provinces no systemic corruption cases were identified. The Directorate also had capacity constraints
Percentage of approved systemic corruption investigations completed within 12 months	New target	20% of approved cases	8% 1 out of 12 approved cases completed	12%	Target not met. The approval of systemic corruption was done on the third and the fourth quarter and investigations are on-going. The Directorate also had capacity constraints
Percentage reduction of annual brought forward investigations (excluding cases of systemic corruption)	New target	50% of investigations brought forward from the previous financial year	52% decrease of the annual brought forward from the previous financial 2012/2013, brought forward was 3078 and at the end of the financial year 2013/2014 was at 1475	2%	Target met. There was a concerted effort to improve the completion of annual brought forward cases which resulted in the target being exceeded

Table 1.2: the comparison of the number of corruption cases and other cases handled by the IPID during the 2013/2014 financial year (IPID 2013/2014 Annual Report)

55. Although I will desist from advancing any legal arguments on this matter, I have considered the Glenister judgement which reads:

***"In light of international standards, one of the prominent and mandatory features of specialised institutions is not full independence but rather an adequate level of structural and operational autonomy secured through institutional and legal mechanisms aimed at preventing undue political interference as well as promoting 'pre-emptive obedience'."***

56. I will rather focus on politicisation of independent bodies and submit that a mere reporting to the minister and the power to suspend or remove the head of the IPID is by far not a politicisation of that body nor does it constitute "political interference". It is a clear issue of policy which relates to the responsibilities of the executive in ensuring the smooth running of the government business. This is needed in any democracy and does not automatically amount to politicisation. In addition, the afore-going excerpt is clearly directed at an ACA which will have the powers to investigate everyone including the ministers.

**THE DIFFERENCE BETWEEN THE DIRECTORATE OF PRIORITY CRIMES INVESTIGATIONS (ANTI-CORRUPTION BODY) AND THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (OVERSIGHT BODY)**

57. In a nutshell, the difference between the DPCI and the IPID is that each of these bodies was established for a different purpose, based on different intentions of the legislature, different legislation and structure as well as being guided by two distinct conventions. These differences are shown in the table below:



THE DPCI	THE IPID
It is an Anti-Corruption body	It is a civilian oversight body
Based on Article 6 and 36 of the United Nations Convention Against Corruption	Based on Article 1 of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
Based on the principles as contained in the 1997 Convention of the Organisation of Economic Co-operation and Development (OECD)	Based on the principles as contained in the Handbook on Police Accountability, Oversight and Integrity (prepared by UNODC)
<p>Premised on</p> <ul style="list-style-type: none"> <li>• Paragraph 5, Article 20 of the African Union Convention on Preventing and Combating Corruption</li> <li>• Article 4 of the Southern African Development Community Protocol Against Corruption</li> </ul>	Premised on the Code of Conduct for Law Enforcement Officials adopted by the UN General Assembly in 1979
Derives its mandate mainly from the Prevention and Combating of Corrupt	Derives its mandate from the IPID Act



Activities Act(Act 12 of 2004) and the SAPS Act	
Investigate every citizen in the country irrespective of whether they are part of the legislature, executive or the judiciary	Investigate and handle complaints against police officials only
It is a specialised body	Its mandate includes other aspects other than corruption such as police brutality and general misconduct

58. It would be surprising to have two different Conventions which cover each of these bodies if the intention and the purpose of such bodies were similar.

59. It is my submission that the mere fact that a particular institution is having an anti-corruption function does not conclusively mean that such institution is an Anti-Corruption Agency. For instance, the SAPS itself investigate and deal with corruption cases but this does not mean the SAPS is an Anti-Corruption Agency. The Department of Home Affairs has an Anti-Corruption Unit but it cannot be sensibly argued that it is an Anti-Corruption body. The main distinguishing feature in international literature is whether a body is primarily responsible for corruption investigations. The mere fact that corruption is an aspect of its mandate is not determinative.

60. It is wrong to conclude without any objective research evidence that there is likely

to be an improper relationship between the Minister of Police and the National Commissioner of Police. Politicians cannot be the subject of an IPID investigation. There are perceptions that are to be expected though which are not exclusive to the IPID such as:

60.1 People with money will not face their crimes;

60.2 Our courts are biased;

60.3 They will employ their own friends and not me, etc.

61. These statements are ordinary feelings which are often not backed by any concrete evidence. They are acceptable coming from laypersons but gravely concerning if made by researchers, politicians or people with resources to carry out empirical research to arrive at such conclusions.

## **RESPONSIBILITY OF THE MINISTER FOR EFFECTIVE POLICING**

62. I state that the Minister of Police is primarily responsible for the existence of effective policing in South Africa. Now, effective policing means the ability to deal with crime in a manner that does not negate the human rights of the citizens. Effective policing requires oversight. Oversight is primarily the responsibility of the executive. It is therefore wrong to see the role of IPID in contrast to that of the Minister in relation to the oversight function. The two should be understood as being complimentary with a common constitutional objective, namely, effective and accountable policing.

63. For the minister to discharge the duties and responsibilities as placed on him by the Constitution, there is a need for mechanisms to ensure that these duties are performed in accordance with applicable laws. These mechanisms are the SAPS which is responsible for dealing with crime, the Secretariat of the Police which advises the minister on policy issues and the IPID.
64. The issue of monitoring police conduct is placed on the executive (cabinet) by the Constitution. If there are any arguments about this constitutional arrangement, it should be on the degree of independence that should be afforded the IPID. It is my considered view that decreasing or amending the involvement of the executive (cabinet) in IPID will in fact undermine the Constitution and relieve the Minister of his or her constitutional duties. The involvement of the executive in the civilian oversight body is not prohibited in literature and it forms part of the best practices as contained in the Handbook on Police Accountability, Oversight and Integrity. The following excerpts from this handbook are particularly relevant to this submission:

***"An independent body cannot function properly without the support of the executive and the parliament, so that the executive has not only to accept but also facilitate the work of those responsible for scrutinising it."***

65. In addition, the following excerpt emphasises the relationship between the civilian oversight body and the cabinet:

***"In fact all the principles of police accountability apply equally to independent bodies."***



66. These accountability principles include the clear requirement that the head of the IPID reports to the minister.
67. It is my submission that the parliament or a parliamentary committee is clearly formulated on political representation. As much as the cabinet ministers mostly (not always) come from the ruling party, there is more likelihood of political agendas in parliament than there can be with an individual minister. This is not speculative because it is a known fact that the parliamentarians represent their constituencies while the ministers are expected to serve everyone in the country irrespective of their political affiliation. The minister is also not reigning freely but must comply with the requirements of administrative law such as procedural fairness, openness and impartiality. The minister is the subject of the law and cannot act in an arbitrary or willy-nilly manner without a reaction from the other arms of the state. The courts and the parliament are entitled to intervene as and when this happens.
68. I submit that there is a need for executive authority over the IPID. The main responsibilities of the minister of police are to develop and implement policy as well as implement the law (PMG, Undated). The IPID is such legislation and the role of the minister is to implement such law including removing the head of the IPID in terms of Section 6(6). The fact that the minister cannot legislate such powers but only implement it is also one of the filters or safety valves against undue political influence. In this instance, he can only perform the duties contained in the IPID Act which gives effect to the provisions of the Constitution -



nothing more or nothing less.

69. It is my expert opinion that unchecked power is dangerous and it corrupts. Just like any other entities in government, the IPID must be accountable so that their powers are kept in check. If unchecked, their activities could include micro-managing the SAPS and paralysing it. An example is when the IPID officials storm the police station and deal with operational issues such as uniform, the cleanliness of the floors and other issues which are not required in terms of IPID's legislative mandate.
70. There will be an administrative vacuum if the head of the IPID who is currently a Deputy-Director General has to report directly to parliament. This would mean that the implementation of legislation would only be done at that level. This may make sense but it does not make a business sense because the primary function of parliament is to make law. An additional filter is found in the provisions of the Executive Members' Ethics Act of 1998 as well as a Code of Ethics created by the president as the head of the executive.
71. It is not practical to adopt the suggestion that Parliament must be involved in the discipline of the executive head of IPID. The responsibilities of a parliamentary committee are listed as (PMG, Undated):

71.1 Initiating legislation,

71.2 Debating and amending legislation,

SJ



- 71.3 Monitoring the departments they oversee,
- 71.4 Investigating and making recommendations on the budget of these departments,
- 71.5 Holding public hearings or asking for submissions on important Bills, and
- 71.6 Investigating any function of the executive and its department, this includes summoning ministers and any departmental official to appear before them to supply information.
72. It is concluded and submitted that the amendment of the role of the minister and that of the parliamentary committee on IPID will have an adverse impact on the smooth operation of government business. This state of affairs will be inconsistent with the Constitution and will undermine the protection of the executive to perform their duties free from other arms of government. It will be difficult to assess the performance of the minister in ensuring that the police institutions are legitimate and conduct its business within the ambit of the law. The Minister is responsible to ensure civilian oversight over the police. IPID is also established for the same purpose.

#### **THE INDEPENDENCE OF THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE**

73. This section of my affidavit considers the question of "how independent is the IPID" and whether the power of the minister to remove the head of the IPID can stifle its independence. It is my submission that the current model of IPID is a product of a

public process which culminated in the IPID Act. Any possible change in the law should also be tested in a public participation process.

74. A critical question is whether the powers of the minister to remove the head of the IPID due to the grounds provided for in the IPID Act is legally offensive. I submit that it can only be legally offensive if its existence totally disables the IPID to discharge its legal duties. It is my considered view that there is no way in which this power of the minister can disable the IPID to discharge its duties more so that it does not investigate the politicians or the executive.
75. The IPID has been afforded more powers. This is in line with the guidelines provided by international organisations to which we are signatory such as the United Nations. It is my submission that although the IPID is not absolutely independent, it is adequately independent. In fact, it is too early to complain about how the IPID is established and how the power relations in its context are structured. The IPID only started operating fully under the ambit of the new legislation in 2012. The success or failure of the current model is yet to be fully determined.
76. I submit that any allusion about political interference and authoritative capture to the IPID is not based on scientific research. It is my considered view that there is no published research that has measured or established a relationship between the powers of the minister in Section 6 of the IPID Act and the independence of the IPID. Statistics obtained in 2010 are not particularly helpful since they were



focused on ICD, not IPID.

77. I further state that the allusion that the minister's power to remove the head of IPID is a compromise to its independence is speculative. I have not conducted any empirical research on this specific issue personally and this is due to the short span of the IPID thus far. I am not aware of any empirical studies conducted after the passage of the IPID Act, which would be relevant for the issue of the independence of IPID.
78. There is no need to rely on speculative research when the relationship between the minister's powers and the independence of the IPID can be measured through objective and scientific research methods.
79. The only research which comes closer to measuring the independence of the IPID and was published in the Law, Democracy and Development Journal, Volume 17 of 2013 is titled "*Who is watching the watchers?: A critical assessment of the Independent Police Investigative Directorate's prospects of investigating misconduct in the South African Police Service*". Although the authors of this article raise very critical issues, they do not pinpoint the issue of removal of the head of the IPID by the minister of police.
80. In fact, Vawda and Mtshali (2013:146-147) who authored the article referred to above, are more concerned about the manner in which the head of the IPID is appointed as well as the renewable term of office. There is a consideration



however, that these authors submitted the following statement:

***“Though the risk of political involvement in the DPCI is much greater than in the IPID, it remains a potential risk to the work of the IPID.”***

81. The authors perceptively point to the greater wish of political involvement in the DPCI. However, my conclusion is that even the findings of this research are problematic because it is conceptualised in a manner that fails to adequately appreciate the difference between a specialised corruption body and a police complaints body.
82. I submit that conflict is inherent in professional relationships such as the one between the minister and the head of the IPID. These clashes may be personal in nature or relate to a disagreement of specific issues of strategy and operations. But, if such problems come to the fore, they need to be resolved through provided conflict resolution mechanisms rather than tampering with legislation which has been in operation for only two and half years.
83. It is my submission that the civilian oversight body of South Africa is classified under the ‘fully independent’ oversight bodies in the world. Amongst different sets of criteria, it is clear that the IPID is best suited for oversight and qualifies fully in terms of the following criteria (UNODC 2011:54):
- 83.1 Political commitment, which is key to the success of an independent oversight mechanism;

- 83.2 A clear mandate;
- 83.3 Adequate financial and human resources;
- 83.4 Engagement with the police; and
- 83.5 Engagement with the general public.
84. This recognition of IPID as a fully independent oversight body should be lauded more so since this finding was made when the civilian oversight body was still the ICD. It is declared in the same handbook that more improvements were to come at that point. According to UNODC (2011:59), at the time of writing, a new Independent Police Investigative Directorate Bill was being considered by the National Assembly.
85. The provisions of Section 6 (6) of the IPID Act cannot be dismissed superficially as unconstitutional. In fact, some of the researchers and authors in this field describe it differently from a legislative loophole or unconstitutional provision. Yes, some such as Gareth Newham of the Institute for Security Studies calls it 'discomfort'. Now a discomfort cannot be interpreted as a loophole. It is a reality which may not sit well with some of the quarters of the society. But the reality is, the head of the IPID must account and the minister must have responsibility over the IPID no matter how uncomfortable that can be.
86. It is my submission that independence is a complex phenomenon. In considering the independence of IPID, one cannot rely on one factor such as in this instance,

the power of the minister to remove the head of the IPID. Even literature generally suggests that the independence of the IPID is a multi-faceted phenomenon. This independence may be structural or operational in nature, absolute or adequate, but most importantly it may also relate to the position of the current IPID which is free and independent from the SAPS in contrast to how the ICD was positioned. IPID uses detention facilities of the SAPS and their laboratory services. But this is not problematic and consistent with most of the civilian oversight bodies world over. It will be counterproductive to build detention facilities solely for the use of the civilian oversight body.

87. South Africa is an open and democratic society and there are numerous recourses available to the head of the IPID in cases where the executive would have acted out of malice. One of the mitigating factors is the security afforded to the head of IPID as far as their tenure of office is concerned. The term of office is guaranteed unless the incumbent commits one of the acts as contained in Section 6 (6) (a-c).
88. I state that in considering the question of whether the IPID is adequately independent and whether the minister's power to remove the head of IPID will compromise its independence, I consulted different literature sources and these are included in the text and listed below through traditional Harvard method:
- 88.1 Burger, J. 2007. Strategic perspectives on crime and policing in South Africa. Pretoria: Van Schaik Publishers
- 88.2 De Sousa, L. 2002. Anti-Corruption Agencies as central pieces in a national integrity system. Florence: European University Institute



- 88.3 Faull, A. 2010. An improved Independent Police Investigative Directorate to address systemic police corruption. Pretoria: ISS
- 88.4 Hough, M and Du Plessis, A. 2003. Combating crime in South Africa: Contemporary perspectives. *ISSUP Ad Hoc Publication*, number 40, November: 19
- 88.5 International Conference on Education Management Science (ICEMS). 2014. The Proceedings. Lancaster: DEStech Publications, Inc
- 88.6 IPID (Independent Police Investigative Directorate). Annual Report 2013-2014" (2014) *ICD Report* at [http://www.ipid.gov.za/documents/report\\_released/annual\\_reports/2010-2011/ICD%20Annual%20Report%202010-11.pdf](http://www.ipid.gov.za/documents/report_released/annual_reports/2010-2011/ICD%20Annual%20Report%202010-11.pdf) (accessed 9 August 2015).
- 88.7 Kleyn, E; Rothmann, S & Jackson L T B. 2004. Expectations of and satisfaction with the South African Police Service in the Rustenburg area. *South African Journal of Industrial Psychology*, 30: 30-75
- 88.8 Longman Dictionary of Contemporary English, 1995. *The complete guide to written and spoken English*. Longman Group: England.
- 88.9 Meagher, P. 2002. Anti-Corruption Agencies: A review of experience. Maryland: World Bank
- 88.10 Montesh M & Dintwe SI "How independent is South Africa's Independent Complaints Directorate?" (2008) 212 *Acta Criminologica* 163.
- 88.11 Palmiotto, M J. 2004. Criminal investigation. Maryland: University press of America Inc
- 88.12 Parliamentary Monitoring group (PMG). Nd. Structure of government. Available from <https://pmg.org.za/page/structure-of-government> (accessed 07 August 2015)
- 88.13 Rabkin, F. 2015. McBride's IPID is independent, but how independent? Available from <http://www.businessday.co.za> (accessed 08 August 2015)
- 88.14 South Africa (Republic). 1996. *Constitution of the Republic of South Africa Act 108 of 1996*. Pretoria: Government Printer.
- 88.15 South Africa (Republic). 1998. *South African Police Service Amendment Act 83 of 1998*. Pretoria: Government Printer.

Handwritten signature and initials, possibly 'SJ' and a stylized 'W' or 'M'.



- 88.16 South Africa (Republic).1993. *Interim Constitution Act 200 of 1993*. Pretoria: Government Printer.
- 88.17 South Africa (Republic).1995. *South African Police Service Act 68 of 1995*. Pretoria: Government Printer
- 88.18 Spence, J E. 2007. *Sharpeville massacre*. Available at: <http://uk.encarta.msn.com>. Accessed on (14 February 2008)
- 88.19 Tait, S. 2007. *Strengthening police oversight in South Africa: Opportunities for state civil society partnerships*. Available on: <http://www.csvr.org.za/confpaps/tait.htm>. Accessed on 14 February 2008
- 88.20 UNODC "Handbook on Police Accountability, Oversight and Integrity" (2011) United Nations Office on Drugs and Crime, at [http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability Oversight and Integrity 10-57991 Ebook.pdf](http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf)(accessed 07 August 2015).
- 88.21 Vawda, Y.A. & Mtshali, M. 2011. Who is watching the watchers?: A critical assessment of the Independent Police Investigative Directorate's prospects of investigating misconduct in the South African Police Service. Law, Democracy and Development, Vol 17. Pp. 132-156
- 88.22 Worldbank. 1999. *Fostering institutions to contain corruption*, PREMnotes: Public Sector, no.24, June




**DEPONENT**

I certify that the deponent declares that he knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Sandton on this day 13<sup>th</sup> of **AUGUST 2015** and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

**COMMISSIONER OF OATHS**  
**FULL NAMES:**  
**CAPACITY:**  
**ADDRESS:**

**Andries Maree**  
 Commissioner of Oaths  
 Reference: 22/11/2012 Randburg  
 165 West Street, Sandton



**ANNEXURE "SD1"****CURRICULUM VITAE**

**Curriculum Vitae of  
Dr Setlhomamaru Isaac Dintwe**

South Africa

Tel: +27 (0) 12 433 9443 (office) Fax: 086 690 3926 Mobile: + 27 (0) 83 581 6102

E-mail: [Dintwsi@unisa.ac.za](mailto:Dintwsi@unisa.ac.za)

<b>SURNAME</b>	: Dintwe
<b>FULL NAMES</b>	: Setlhomamaru Isaac
<b>ID NUMBER</b>	: 761010 6023 08 7
<b>GENDER</b>	: Male
<b>DATE OF BIRTH</b>	: 10 October 1976
<b>HOME TOWN</b>	: Pretoria
<b>DRIVER'S LICENCE</b>	: Code EB
<b>MARITAL STATUS</b>	: Never married

## EDUCATION AND TRAINING

- 2013** : Doctor of Literature and Philosophy (DLitt et Phil) (Police Science)  
Professionalization as a regulatory framework for Forensic Investigation  
milieu in South Africa: University of South Africa
- 2009** : Master of Technology in Forensic Investigation: The significance of  
biological exhibits in investigation of rape cases: University of South Africa
- 2003** : Bachelor of Technology in Policing: Technikon Southern Africa
- 1998** : Bachelor of Criminal Justice: University of North West
- 1994** : Senior Certificate (Matric): Barolong High School

## OTHER QUALIFICATIONS

- 2008** : Assessor Programme: Unit Standard 115753
- 2008** : Assessor Programme: Unit Standard 115755
- 2008** : Moderator Programme: Unit Standard 115759
- 2009** : Design OB learning programmes: Unit Standard 123401
- 2009** : Develop OB learning programmes: Unit Standard 123394
- 2010** : Skills development facilitation: Unit Standards 252041; 15221; 15232;  
15217; 15228 and 15227
- 2011** : Facilitate learning based on the outcomes of the US: Unit Standard 117871
- 2011** : Certificate on Organised Crime: ISSOC, Ohrid, Yugoslavian Republic of  
Macedonia

## EMPLOYMENT HISTORY

**2014 July to 2015 January:** Deputy Director: Research and Policy. Gauteng  
Department of Community Safety (Secondment ending 31  
January 2015)

**Job description:**

- 1. Develop a research and knowledge management strategy**
- 2. Manage research staff and resources**



3. Compile periodical reports
4. Conduct research on safety and security issues
5. Advise policy development and implementation process
6. Create partnerships with other research institutions

**2011 January to date** : Senior Lecturer- Department Police Practice, School of Criminal Justice, University of South Africa

**Job description** : 1. Tuition: Teaching and Masters supervision of Intelligence, forensic Methods and Techniques and cyber-forensics

2. Research (60% of key performance area)
3. Community engagement and outreach
4. Supervision and mentoring of junior staff
5. Management of subjects' stakeholders
6. Assessment and moderation

**2007 January to 2010/12** : Lecturer- Department Police Practice, School of Criminal Justice, University of South Africa

**2007 August to 2007/12** : Manager- Investigations: Mpumalanga Provincial Office: Independent Complaints Directorate (Promotion)

**Job description** : 1. Human, Capital, Budget and total resource management

2. Supervise the component staff
3. Act as provincial head when required
4. Investigation of high profile cases in the province
5. Compilation of periodical reports
6. Overt and covert intelligence gathering
7. Co-ordinate Section 252A and 205 Subpoenas





- 2005 January to 2007/07** : Principal Investigator- Anti Corruption Command:  
Independent Complaints Directorate (Promotional  
transfer)
- 2001 June to 2005/01** : Detective- Boitekong Detective Branch: South African  
Police Services
- 2000 October to 2001/05** : Police Constable- Client Service Centre: Boitekong  
Police Station: South African Police Services
- 1997** : Student Prosecutor: Atamelang Magistrate Court:  
University Practicals

#### RESEARCH AND ACADEMIC CONFERENCES

- 2007 July** Forensic investigations strategies conference, Fourways-  
Johannesburg: Speaker: Reflections on the development of training  
in the field of Forensic Investigations
- 2008 October** SAAPAM annual conference, Bloemfontein: Speaker: The oversight  
in the Criminal Justice system: A critical analysis
- 2008 December** CODESRIA Conference, Yauonde, Cameroon: Speaker: The recent  
xenophobic attacks in South Africa: A crime or an opportunity?
- 2009 September** CRIMSA Bi-Annual Conference, Pretoria: Speaker: Who is fooling  
who? The (in) consistency of the Parole Boards on medical paroles  
in South Africa
- 2010 November** International Police Executive Symposium conference, Kerala State,  
India: Speaker: The survival of Community Policing in re-militarised  
police approach: a paradoxical case of South Africa
- 2012 March** SAAPAM special conference celebrating the ANC centenary:  
Mangaung: Speaker: The African National Congress led  
government's (in)ability to counter public corruption: a forensic  
criminological perspective
- 2012 July** International Police Executive Symposium 2012 Annual Conference:




- New York: Speaker: The (in)effectiveness of anti-corruption programme in addressing public corruption: a case of South Africa
- 2013 August** SAAPAM Limpopo Chapter 2<sup>nd</sup> Annual Conference. Speaker: Procurement fraud red flags in the South African municipalities' corporate governance
- 2014 March** SAAPAM 14<sup>th</sup> Annual Conference. Mokopane, Limpopo. Speaker: developing an anti-corruption strategy for the South African public sector
- 2014 August** International police Executive Symposium 2014 Annual Conference: Sofia, Bulgaria: Speaker: An assessment of Audit Committees' effectiveness in the public sector: A South African perspective

## RESEARCH PUBLICATIONS

1. How independent is the South Africa's Independent Complaints Directorate: Acta Criminologica 21(2) 2008 (co-published)
2. The oversight in the Criminal Justice system: A critical analysis: Journal of Public Administration Vol 4 (special edition) 2009
3. The skills shortage in the Public Sector: UNISA Student Chat Journal Vol 2 2010
4. Nascent policy framework regulating medical parole: Journal of Public Administration Vol 46 number 4
5. The survival of Community policing in a re-militarised police approach: a Paradoxical case of South Africa: Global Community Policing-problems and challenges: Chapter 12: (ed) A Verma, DK Das & M Abraham: Taylor & Francis publishers
6. The African National Congress led governments (in)ability to counter public corruption: a forensic criminological perspective: The Journal of Africa's Public Service Delivery and Performance Review. Vol 2 2013
7. Procurement fraud red flags in the South African municipalities' corporate

governance. SAAPAM Limpopo Chapter 2<sup>nd</sup> Annual Conference. Conference proceedings 2013: ISBN 978-0-620-56772-5 (Co-authored with MM Matlala)

8. A perspective of white collar crime as a global financial problem. 1<sup>st</sup> International conference on development finance and economic transformation. Conference proceedings 2013: ISBN 978-0-9921971-1-7 (Co-authored with M Montesh and B Mmusinyane)
9. The role of digital evidence in investigation of cartels in South Africa. 1<sup>st</sup> International conference on development finance and economic transformation. Conference proceedings 2013: ISBN 978-0-9921971-1-7 (Co-authored with M Montesh and V Basdeo)
10. The [in] effectiveness of Anti-Corruption programmes in addressing public sector corruption. The Journal of Public Administration. Vol 48 (4) 2013
11. Developing an anti-corruption strategy for the South African public sector. The journal of Public Administration. Vol 49 (1) 2014
12. An assessment of Audit Committees' effectiveness in the public sector. Mediterranean Journal of Social Sciences. Vol 5 (17)

## OTHER ACHIEVEMENTS

**1997:** Founder member: Student Religious Fraternity- University of North West

**2001:** Best academic student: Pretoria West Police Training College

**2001:** Best student bursary recipient: Technikon Southern Africa

**2006:** Best Master of Technology student in the field of policing: Awarded by the Policing Association of Southern Africa (POLSA)

## OTHER COMPETENCIES

Ms Word, Power point, Spreadsheet, E-mail and internet

Group facilitation

Community and stakeholder engagement

Report and article writing






**REFEREES**

**Prof Moses Montesh: Academic Mentor**

011 471 2066 Cell 082 332 0607

**Adv M Tsimane: Provincial Director: ICD**

013 754 1000 Cell 084 755 8778

**Colonel T Kgomo: Mentor (Investigations and Intelligence)**

012 320 0431 Cell 082 849 5848



**ANNEXURE "SD2"****RESEARCH PUBLICATIONS AND CONFERENCES****RESEARCH OUTPUT: PUBLICATIONS**

1. How independent is the South Africa's Independent Complaints Directorate: Acta Criminologica 21(2) 2008 (co-published)
2. The oversight in the Criminal Justice system: A critical analysis: Journal of Public Administration Vol 4 (special edition) 2009
3. The skills shortage in the Public Sector: UNISA Student Chat Journal Vol 2 2010
4. Nascent policy framework regulating medical parole: Journal of Public Administration Vol 46 number 4
5. The survival of Community policing in a re-militarised police approach: a Paradoxical case of South Africa: Global Community Policing-problems and challenges: Chapter 12: (ed) A Verma, DK Das & M Abraham: Taylor & Francis publishers
6. The African National Congress led governments (in)ability to counter public corruption: a forensic criminological perspective: The Journal of Africa's Public Service Delivery and Performance Review. Vol 2 2013



7. Procurement fraud red flags in the South African municipalities' corporate governance. SAAPAM Limpopo Chapter 2<sup>nd</sup> Annual Conference. Conference proceedings 2013: ISBN 978-0-620-56772-5 (Co-authored with MM Matlala)
8. A perspective of white collar crime as a global financial problem. 1<sup>st</sup> International conference on development finance and economic transformation. Conference proceedings 2013: ISBN 978-0-9921971-1-7 (Co-authored with M Montesh and B Mmusinyane)
9. The role of digital evidence in investigation of cartels in South Africa. 1<sup>st</sup> International conference on development finance and economic transformation. Conference proceedings 2013: ISBN 978-0-9921971-1-7 (Co-authored with M Montesh and V Basdeo)
10. The [in]effectiveness of Anti-Corruption programmes in addressing public sector corruption. The Journal of Public Administration. Vol 48 (4) 2013
11. Developing an anti-corruption strategy for the South African public sector. The journal of Public Administration. Vol 49 (1) 2014

## CONFERENCES

**2007 July** Forensic investigations strategies conference, Fourways-Johannesburg: Speaker: Reflections on the development of training in the field of Forensic Investigations



- 2008 October** SAAPAM annual conference, Bloemfontein: Speaker: The oversight in the Criminal Justice system: A critical analysis
- 2008 December** CODESRIA Conference, Yauonde, Cameroon: Speaker: The recent xenophobic attacks in South Africa: A crime or an opportunity?
- 2009 September** CRIMSA Bi-Annual Conference, Pretoria: Speaker: Who is fooling who? The (in) consistency of the Parole Boards on medical paroles in South Africa
- 2010 November** International Police Executive Symposium conference, Kerala State, India: Speaker: The survival of Community Policing in re-militarised police approach: a paradoxical case of South Africa
- 2012 March** SAAPAM special conference celebrating the ANC centenary: Mangaung: Speaker: The African National Congress led government's (in)ability to counter public corruption: a forensic criminological perspective
- 2012 July** International Police Executive Symposium 2012 Annual Conference: New York: Speaker: The (in)effectiveness of anti-corruption programme in addressing public corruption: a case of South Africa
- 2013 August** SAAPAM Limpopo Chapter 2<sup>nd</sup> Annual Conference. Speaker: Procurement fraud red flags in the South African municipalities' corporate governance.
- 2014 March** SAAPAM 14<sup>th</sup> Annual Conference. Mokopane, Limpopo. Speaker: developing an anti-corruption strategy for the South African public sector

S J.

